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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

'99 AUG 24 P2:33

IN THE MATTER OF:

G&W Electric Company  
3500 West 127<sup>th</sup> Street  
Blue Island, Illinois

Respondent.

)  
)  
) Docket No.. **CAA-5- '99 - 0301**  
)  
) Proceeding to Assess  
) Administrative Penalty  
) under Section 113(d) of the  
) Clean Air Act,  
) 42 U.S.C. § 7413(d)

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**ADMINISTRATIVE COMPLAINT**

This is an action for the assessment of a civil administrative penalty brought, pursuant to Section 113(d) of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7413(d), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" (Consolidated Rules), 40 C.F.R. Part 22, against Respondent, G&W Electric Company ("G&W"), for violations of Section 112 of the Act, 42 U.S.C. § 7412, and the regulations promulgated thereunder at 40 C.F.R. Part 63, Subpart T, §§ 460-469, which set forth the National Emission Standards for Hazardous Air Pollutants for Halogenated Solvent Cleaning.

**THE PARTIES**

1. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental

Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

2. The Respondent is G&W, a corporation created under the laws of the State of Illinois, which owns and operates an existing batch cold solvent cleaning machine at its Blues Island facility located at 3500 West 127<sup>th</sup> Street.

#### **STATUTORY AND REGULATORY BACKGROUND**

3. Pursuant to Section 112(b) of the Act, 42 U.S.C. § 7412(b), the Administrator of the U.S. EPA listed methylene chloride as a hazardous air pollutant and prescribed a national emission standard for this and other hazardous pollutants for the source category of halogenated solvent cleaning.

4. Pursuant to Section 112 of the Act, U.S. EPA published the National Emission Standards for Halogenated Solvent Cleaning regulations, at 40 C.F.R. Part 63, Subpart T, §§ 63.460 to 63.469.

5. The provisions of Subpart T apply to owners and operators of any batch cold solvent cleaning machine that uses any solvent containing methylene chloride (CAS No. 75-09-2) in a total concentration greater than 5 percent by weight, as a cleaning and/or drying agent. 40 C.F.R. § 63.460(a) and (b).

6. Each solvent cleaning machine subject to Subpart T that commenced construction on or before November 29, 1993, shall achieve compliance with the regulations set forth in subpart T no later than December 2, 1997.

7. "Owner or operator" means any person who owns, leases, operates or supervises a stationary source. 42 U.S.C.

§ 7412(a)(9).

8. "Person" means an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent or employee thereof. 42 U.S.C. § 7602.

9. "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant. 42 U.S.C. § 7411(a)(3).

10. "Hazardous air pollutant" means any air pollutant listed pursuant to 42 U.S.C. 7412(b). 42 U.S.C. 7412(a)(6).

11. "Batch cleaning machine" means a solvent cleaning machine in which individual parts or a set of parts move through the entire cleaning cycle before new parts are introduced into the solvent cleaning machine. 40 C.F.R. § 63.461.

12. "Cold cleaning machine" means any device or piece of equipment that contains and/or uses liquid solvent, into which parts are placed to remove soils from the surfaces of the parts or to dry parts. 40 C.F.R. § 63.461.

13. "Existing" means any solvent cleaning machine the construction of which was commenced on or before November 29, 1993. 40 C.F.R. § 63.461.

#### **GENERAL ALLEGATIONS**

14. The Statutory and Regulatory Background statements contained in paragraphs 1 through 13 are incorporated herein by reference.

15. The Attorney General of the United States has concurred with the determination of the Administrator of U.S. EPA, each through their respective delegates, that an administrative assessment of civil penalties is appropriate for the period of violations alleged in this Complaint.

16. On or about March, 1996, G&W purchased the Blue Island, Illinois facility, which included the purchase of an existing batch cold solvent cleaning machine.

17. Upon purchase and acquisition of all assets at the Blue Island, Illinois facility, G&W became the owners and operators of the existing batch cold solvent cleaning machine located at the Blue Island, Illinois facility.

18. Before and since December 2, 1997 to December 1998, the existing batch cold solvent cleaning machine used a solvent containing methylene chloride in a total concentration greater than 5 percent by weight, as a cleaning and/or drying agent.

19. G&W was required to achieve compliance with the provisions of Subpart T at its existing batch cold solvent cleaning machine on or before December 2, 1997.

20. G&W is the owner and operator of the existing batch cold solvent cleaning machine, as defined in 40 C.F.R. 63.461.

21. G&W is a "person" as defined at 42 U.S.C. § 7602.

#### **COUNT I**

22. Paragraphs 1 through 21 of this Administrative Complaint are hereby incorporated by reference as if fully set forth in this paragraph.

23. 40 C.F.R. 63.462(a) requires each owner or operator of a batch cold solvent cleaning machine to employ a tightly fitting cover that shall be closed at all times except during parts entry and removal, and a water layer at a minimum thickness of 2.5 centimeters (1.0 inch) on the surface of the solvent within the cleaning machine, or employ a tightly fitting cover that shall be closed at all times except during parts entry and removal and a freeboard ratio of 0.75 or greater.

24. On December 2, 1997 to December , 1998, G&W failed to maintain a water layer at a minimum thickness of 2.5 centimeters (1.0 inch) on the surface of the solvent within the cleaning machine, or have a freeboard ratio of 0.75 or greater at its existing batch cold solvent cleaning machine.

25. G&W's failure to maintain a water layer at a minimum thickness of 2.5 centimeters (1.0 inch) on the surface of the solvent within the cleaning machine, or have a freeboard ratio of 0.75 or greater at its batch cold solvent cleaning machine constitutes a violation of 40 C.F.R. § 63.462(a).

26. G&W's violation of 40 C.F.R. § 63.462(a) subjects G&W to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

#### COUNT II

27. Paragraphs 1 through 26 of this Administrative Complaint are hereby incorporated by reference as if fully set forth in this paragraph.

28. 40 C.F.R. §63.468(c) requires each owner or operator of an existing batch cold solvent cleaning machine to submit a compliance report to the Administrator no later than 150 days after December 2, 1997.

29. From May 2, 1998 to December, 1998, G&W did not provide the Administrator with a compliance report for its existing batch cold solvent cleaning machine as required by 40 C.F.R.

§ 63.468(c).

30. G&W's failure to submit a compliance report on or before May 2, 1998, for its existing batch cold solvent cleaning machine constitutes a violation of 40 C.F.R. § 63.468(c).

31. G&W's violation of 40 C.F.R. § 63.468(c) subjects G&W to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

**NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY**

32. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, allows the Administrator of U.S. EPA to assess a civil penalty not to exceed \$25,000 per day up to a total of \$200,000 for each violation of Section 112 of the Act, 42 U.S.C. 7412 that occurred prior to January 31, 1997, and not to exceed \$27,500 per day up to a total of \$220,000 for each violation which occurred on or after January 31, 1997.

33. Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), requires the Administrator to take the following factors into consideration when determining the amount of any penalty to be

assessed under Section 113: the size of Respondent's business; the economic impact of the proposed penalty on Respondent's business; Respondent's full compliance history and good faith efforts to comply; the duration of the violations alleged in the Complaint as established by any credible evidence; payment by Respondent of penalties previously assessed for the same violations; the economic benefit of noncompliance; the seriousness of the violations; and such other factors as justice may require.

34. Based upon the facts alleged in this Complaint and after consideration of the factors discussed above as they relate to Respondent and to the facts and circumstances of Respondent's violations, U.S. EPA hereby proposes to issue to Respondent a Final Order Assessing Administrative Civil Penalties in the amount of forty-six thousand, two hundred dollars (\$46,200.00). This proposed penalty has been calculated in accordance with Section 113(e)(1) of the Act. In developing the penalty proposed in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy ("Penalty Policy"), a copy of which is enclosed with this Complaint.



35. Based on the best information available to U.S. EPA at this time, including the Dun & Bradstreet report, the proposed penalty of \$46,200.00 reflects a current presumption of Respondent's ability to pay the penalty and to continue in business.

36. The penalty proposed in this Complaint has been developed based on the best information available to U.S. EPA at this time, and may be adjusted if the Respondent establishes bonafide issues of ability to pay or other defenses relevant to the appropriateness of the penalty.

37. Respondent shall pay the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and shall deliver it, with a transmittal letter identifying the name of the case and docket number of this Complaint to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

Respondent shall also include on the check the name of the case and the docket number. Respondent simultaneously shall send

copies of the check and transmittal letter to:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

and

Ms. Nidhi K. O'Meara, (C-14J)  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**OPPORTUNITY TO REQUEST A HEARING**

38. Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2), requires the Administrator of U.S. EPA to provide to any person against whom the Administrator proposes to assess a penalty an opportunity to request a hearing on the proposed penalty. Accordingly, you have the right to request a hearing to contest any material fact alleged in the Complaint or to contest the appropriateness of the amount of the proposed penalty. In order to request a hearing, you must specifically make such request in your Answer, as discussed in Paragraphs 39 through 44 below. Any hearing which you request regarding the Complaint will be held and conducted in accordance with the provisions of the Consolidated Rules.

**ANSWER**

39. To avoid being found in default, you must file a written Answer to this Complaint with the Regional Hearing Clerk, (R-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within thirty (30) calendar days of your receipt of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included.

Saturdays, Sundays and Federal holidays shall be included, except when a time period expires on such, in which case the deadline shall be extended to the next business day.

40. Your Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint, or must state clearly that you have no knowledge regarding a particular factual allegation which you cannot admit, deny or explain, in which case the allegation will be deemed denied.

41. Your Answer shall specify:

- a. The circumstances or arguments which you allege constitute grounds for defense;
- b. The facts that you intend to place at issue; and
- c. Whether you request a hearing as discussed above.

42. Your failure to admit, deny or explain any material factual allegation in the Administrative Complaint will constitute an admission of the allegation. You should further note that the Administrator's Rules provide that any hearing that shall be held will be a "hearing upon the issues raised by the complaint and answer."

43. You must send a copy of your Answer and of any documents subsequently filed in this action to Ms. Nidhi K. O'Meara, Assistant Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Ms. O'Meara at (312) 886-0568.

44. If you fail to file a written Answer within thirty (30) calendar days of your receipt of this Complaint, the Administrator of U.S. EPA may issue a Default Order pursuant to 40 C.F.R. § 22.17(a). Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing. The civil penalty proposed herein shall become due and payable without further proceedings sixty (60) days after the Default Order becomes the Final Order of the Administrator pursuant to 40 C.F.R. § 22.27 or § 22.31.

**SETTLEMENT CONFERENCE**

45. Whether or not you request a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Mr. Nhien Pham, Air Enforcement and Compliance Assurance Branch (AE-17J), Air and Radiation Division, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Mr. Pham at (312) 353-8657.

46. Your request for an informal settlement conference does not extend the thirty (30) calendar day period during which you must submit a written Answer to this Complaint. You may pursue simultaneously the informal settlement conference and adjudicatory hearing processes. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such a conference shall be embodied in a Consent Order. Your agreement to a Consent Order issued pursuant to 40 C.F.R. § 22.27 shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

CONTINUING OBLIGATION TO COMPLY

47. Neither assessment nor payment of an administrative civil penalty shall affect your continuing obligation to comply with the CAA or any other Federal, State or local law or regulation.

8/17/99

Date



Margaret M. Guerriero, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection Agency,  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

In the Matter of: G&W Electric  
Docket No. **CAA-5-99-030**

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CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered the original of the foregoing Administrative Complaint to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies, along with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, and a copy of the Penalty Policy (described in the Complaint) by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

Ken Hallberg, Director Safety & Environmental Affairs  
G&W Electric Company  
3500 West 127<sup>th</sup> Street  
Blue Island, Illinois 60404-1864

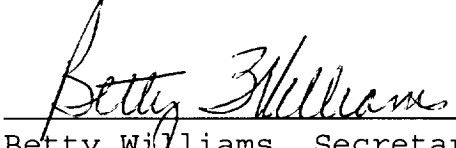
Ms. Katherine Delahunt  
The Law Office of Katherine W. Delahunt  
816 Keystone Avenue  
River Forest, Illinois 60305

I also certify that copies of the Administrative Complaint were sent by First Class Mail to:

David Kolaz, Chief  
Compliance and Systems Management Section  
Bureau of Air  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62702

Harish Narayen, Acting Regional Manager  
Illinois Environmental Protection Agency  
Chicago Regional Office  
1701 First Avenue - Suite 1202  
Maywood, Illinois 60153 David Kolaz, Chief

on the 24<sup>th</sup> day of August, 1999.

  
Betty Williams, Secretary  
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 9140779166